



[Billing Code 6355-01-P]

## **CONSUMER PRODUCT SAFETY COMMISSION**

### **16 CFR Part 1110**

**[CPSC Docket No. CPSC-2013-0017]**

#### **Workshop on Electronic Filing of Certificates as Included in Proposed Rule on Certificates of Compliance**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Announcement of meeting and request for comments.

**SUMMARY:** The U.S. Consumer Product Safety Commission (CPSC, Commission, or we) staff is holding a workshop on aspects of the Commission's proposed rule on Certificates of Compliance (certificates), which the Commission published on May 13, 2013. Among other things, the Commission proposed to require electronic filing of certificates for regulated imported consumer products with U.S. Customs and Border Protection (CBP) at the time of filing the CBP entry or the time of filing the entry and entry summary, if both are filed together. The workshop will focus on this aspect of the proposed rule. We invite interested parties to participate in, or attend the workshop, and to submit written comments.

**DATES:** The workshop will be held from 9 a.m. to 4 p.m. on Thursday, September 18, 2014. Individuals interested in presenting information and participating on a panel at the workshop should register by Friday, August 8, 2014; all other individuals who wish to attend the workshop should register by Friday, September 5, 2014. The workshop will be available via webcast, but viewers will not be able to interact with the panelists and presenters. Written comments must be received by Friday, October 31, 2014.

**ADDRESSES:** CPSC staff will hold the workshop in the Hearing Room at CPSC’s headquarters at: 4330 East West Highway, Bethesda, MD 20814. You may attend the workshop free of charge. Individuals interested in presenting information or attending the workshop should register online at: <http://www.cpsc.gov/meetingsignup.html>, and click on the link titled, **“Workshop on Electronic Filing of Certificates of Compliance for Imported Consumer Products.”** More information about the workshop will be posted at:

<http://www.cpsc.gov/meetingsignup.html>.

You may submit comments related to the workshop and electronic filing of certificates, identified by Docket No. CPSC-2013-0017, by any of the methods below:

*Electronic Submissions*

*Submit electronic comments in the following way:*

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (e-mail), except through: <http://www.regulations.gov>. The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

*Written Submissions*

*Submit written submissions by:*

Mail/Hand delivery/Courier, preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

*Instructions:* All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to:

<http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Submit such information separately in writing.

*Docket:* For access to the docket to read background documents or comments received, go to: <http://www.regulations.gov>, and insert “Docket No. CPSC-2013-0017”, into the “Search” box, and follow the prompts.

#### **FOR FURTHER INFORMATION CONTACT:**

Ms. Celestine Kish, Office of Import Surveillance, 4330 East West Highway, Bethesda, MD 20814; telephone 301-987-2547; e-mail: [ckish@cpsc.gov](mailto:ckish@cpsc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

##### **A. What Is CPSC’s Authority to Regulate Importation of Consumer Products?**

Section 17 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2066) and section 14 of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1273) authorize the Commission to regulate the importation of consumer products and substances that are within the CPSC’s jurisdiction. Among other authorities, section 17 of the CPSA authorizes the Commission to refuse admission and to destroy any product imported or offered for import that, among other things, is not accompanied by a required certificate, fails to comply with an applicable consumer product safety rule, or has a product defect that constitutes a substantial product hazard within the meaning of section 15(a)(2) of the CPSA (15 U.S.C. 2064(a)(2)). CPSC works with CBP to review and inspect cargo and to clear compliant consumer products offered for importation into the United States. CPSC also works with CBP to enforce CPSC regulations and to destroy products that violate the law and cannot be reconditioned for import.

## **B. What Statutory Requirements Apply to Certificates of Compliance?**

*When a certificate is needed.* Section 14 (a) of the CPSA (15 U.S.C. 2063(a)), as amended by the Consumer Product Safety Improvement Act of 2008 (CPSIA), requires that regulated consumer products be certified as compliant with CPSC's regulations by the manufacturer (including an importer)<sup>1</sup> and the private labeler of the consumer product (if such product bears a private label). A regulated consumer product is one that is subject to a consumer product safety rule under the CPSA or similar rule, ban, standard, or regulation under any other law enforced by the Commission that is imported for consumption or warehousing, or distributed in commerce. Section 3(a)(8) of the CPSA (15 U.S.C. 2052(a)(8)) defines "distribute in commerce" to mean "to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce." Section 14(a)(1)(a) of the CPSA requires that a certificate for a regulated non-children's product (General Certificate of Conformity, or GCC) be based on a test of each product or on a reasonable testing program.

Additionally, every manufacturer (including an importer) and private labeler, if there is one, of a children's product that is subject to a children's product safety rule, must have the children's product tested by a CPSC-accepted third party conformity assessment body (laboratory). Based on such third party testing, manufacturers and private labelers must issue a certificate (Children's Product Certificate, or CPC) that certifies that the children's product is compliant with all applicable rules. Section 14(a)(2) of the CPSA requires that testing and certification for regulated children's products be conducted before importing such children's

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<sup>1</sup> Section 3(a)(11) of the CPSA defines "manufacturer" as any person who manufactures *or imports* a consumer product. As such, any statutory obligation assigned to a manufacturer, by definition, applies to an importer. Thus, the statutory obligation to issue a certificate for children's and non-children's products falls to the manufacturer, importer, or the private labeler of a consumer product, if the product is privately labeled under section 3(a)(12) of the CPSA.

products for consumption or warehousing or before distributing such children's products in commerce.

*Content of certificates.* Sections 14(g)(1) and (2) of the CPSA contain certificate content requirements. Certificates ("certificates" collectively refers to GCCs and CPCs) must identify the manufacturer (including the importer) or private labeler issuing the certificate, as well as any third party conformity assessment body on whose testing the certificate depends. At a minimum, certificates are required to include: the date and place of manufacture; the date and place where the product was tested; each party identified on the certificate's name, full mailing address, and telephone number; and contact information for the individual responsible for maintaining records of test results. Additionally, section 14(g) of the CPSA requires that every certificate be legible and that all content be in English. Content may be in any other language as well.

*Availability of certificates.* Section 14(g)(3) of the CPSA establishes certificate availability requirements. The statute requires that every certificate "*accompany the applicable product or shipment of products* covered by the same certificate" and that a copy of the certificate be furnished to each distributor or retailer of the product. (emphasis added). Thus, the statute requires that domestically produced and imported products be accompanied by a certificate. Section 14(g)(3) of the CPSA additionally provides that upon request, the manufacturer (including the importer) or private labeler issuing the certificate must furnish a copy of the certificate to the Commission. Accordingly, *only* presenting a certificate of compliance "on demand" by the Commission does not satisfy the statutory requirement that the certificate "accompany" the product or shipment.

Finally, section 14(g)(4) of the CPSA states that in consultation with the Commissioner of Customs, the CPSC may, by rule, provide for the electronic filing of certificates up to 24

hours before the arrival of an imported product. Upon request, the manufacturer (including the importer) or private labeler issuing the certificate must furnish a copy of the certificate to the Commission or to CBP.

In addition to the statutory authority in section 14 of the CPSA, which requires certificates for regulated products, section 3 of the CPSIA gives the Commission general implementing authority regarding certificates. Section 3 of the CPSIA provides: “[t]he Commission may issue regulations, as necessary, to implement this Act and the amendments made by this Act.”

### **C. What Regulatory Actions Has the Commission Taken Regarding Certificates?**

*Existing 1110 rule.* The Commission promulgated a direct final rule for “certificates of compliance” on November 18, 2008 (73 FR 68328), which is codified at 16 CFR part 1110 (the existing 1110 rule). The Commission published the existing 1110 rule shortly after the CPSIA was enacted on August 14, 2008, to clarify for stakeholders the certificate requirements imposed by the newly amended sections 14(a) and 14(g). The existing part 1110 rule clarified certificate requirements by, for example:

- limiting the parties who must issue a certificate to the importer, for products manufactured outside the United States, and, in the case of domestically manufactured products, to the manufacturer;
- allowing certificates to be in hard copy or electronic form;
- clarifying requirements for an electronic form of certificate; and
- clarifying certificate content requirements.

The existing 1110 rule did not change the statutory requirement that certificates “accompany” the applicable product or shipment of products covered by the certificate.

However, the existing 1110 rule provides another means of meeting the “accompany” requirement, by allowing use of electronic certificates in lieu of paper certificates. Section 1110.13(a)(1) of the existing 1110 rule states:

An electronic certificate satisfies the “accompany” requirement if the certificate is identified by a unique identifier and can be accessed via a World Wide Web URL or other electronic means, provided the URL or other electronic means and the unique identifier are created in advance and are available, along with access to the electronic certificate itself, to the Commission or to the Customs authorities as soon as the product or shipment itself is available for inspection.

*Related Commission rules.* Since the existing 1110 rule was promulgated in 2008, the Commission implemented the testing and labeling requirements in section 14 of the CPSA, including two key rules in 2011, which are related to product certification: (1) *Testing and Labeling Pertaining to Product Certification*, 16 CFR part 1107 (the Testing Rule or the 1107 rule); and (2) *Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party’s Finished Product Testing or Certification, to Meet Testing and Certification Requirements*, 16 CFR part 1109 (the Component Part Rule or the 1109 rule). Both rules were published in the *Federal Register* on November 8, 2011 (76 FR 69482 and 76 FR 69546, respectively). The Testing Rule, effective February 8, 2013, sets forth requirements for the testing, certification, and optional labeling of regulated children’s products. The Component Part Rule, effective December 8, 2011, allows for component part testing and certification to meet testing and certification requirements for children’s and non-children’s products. The

Component Part Rule also sets forth criteria for a manufacturer, importer, or private labeler to certify a regulated consumer product based on another party's testing or certification.

*Proposed amendment to 1110 rule.* On May 13, 2013, the Commission issued a notice of proposed rulemaking (NPR) to amend the existing 1110 rule (78 FR 28080). The NPR proposed to clarify certificate requirements in light of the Testing and Component Part Rules and to implement section 14(g)(4) of the CPSA, which allows the Commission, in consultation with the Commissioner of Customs, to require that certificates for imported products be filed electronically with CBP up to 24 hours before arrival of an imported product. As explained in section IV of this notice, the workshop will focus on the requirement for importers to file electronic certificates with CBP upon entry. In the NPR, proposed § 1110.13(a) states that to meet the statutory requirement that certificates "accompany" products or product shipments, for regulated finished products that are imported for consumption or warehousing, "the importer must file the required GCC or CPC electronically with the CBP at the time of filing the CBP entry or the time of filing the entry and entry summary, if both are filed together." 78 FR at 28108. The NPR also sought comment on allowing filing certificates at a time earlier than entry, at manifest. 78 FR at 28090.

Regarding the technology involved in filing electronic certificates, the Commission proposed filing certificates in the form of an image, a pdf file, or in the form of data elements that can be uploaded into CBP's database and electronically provided to CPSC for review. *Id.* The NPR stated that the Commission prefers data elements so that the information can be uploaded and searchable in a database. The Commission recognized that electronic filing of certificates would require software upgrades that may need to be completed in stages by CBP, CPSC, and stakeholders. The NPR noted that CBP's technology would be used to file



certificates electronically and that the Commission would need CBP's assistance and cooperation in implementing electronic filing of certificates at entry. *Id.*

## **II. What Are We Trying to Accomplish by Requiring Electronic Certificates to Be Filed at Entry?**

The preamble to the NPR states that electronically filing certificate information would aid the Commission in enforcing the certificate requirement and give the Commission the ability to search certificate content information for enforcement and inspection purposes. 78 FR at 28089. Using electronic filing of certificate data would expedite clearance of consumer products at the ports and increase the safety of consumer products entering the United States through improved and more efficient enforcement. Currently, CPSC analyzes certain import data provided by CBP about shipments of consumer products arriving at U.S. ports of entry and then makes risk-based decisions about which products to clear for importation and which products to hold for inspection purposes. In a pilot project initiated in late 2011, CPSC improved its import-related functions by developing a software system known as the RAM (risk assessment methodology), to review CBP's import data. The RAM allows CPSC to analyze CBP's import data more rapidly to identify low-risk cargo to expedite clearance and to focus CPSC's limited resources on high-risk cargo requiring further inspection. CPSC believes that the RAM pilot program successfully allows staff to identify rapidly certain high-risk cargo for hold and inspection and permit low-risk cargo to be cleared through the ports. CPSC can make this assessment at the time of entry, often before products reach U.S. ports, depending upon when the entry documentation is filed with CBP.

CPSC seeks to implement the RAM program beyond the pilot stage. A fully funded and implemented RAM program would allow CPSC to analyze CBP's import data for all consumer products under CPSC's jurisdiction upon entering the United States. In the NPR to amend 16

CFR part 1110, CPSC proposed to include data elements from certificates in the RAM's import risk analysis because this data will assist CPSC in making better and more efficient risk-based decisions for clearance and inspections. As the RAM is currently being used, the addition of certificate data would enable CPSC to automate review of certificate data and to more efficiently clear low-risk cargo at the time of entry. At the same time, CPSC can identify high-risk cargo for hold and inspection at the ports. For most consumer products, clearance at the ports would be expedited by a fully expanded RAM program that incorporates certificate data.

The proposed timing of filing electronic certificates is significant because this timing would align with the receipt of CBP's import data, by requiring certificates to be filed at a point in the entry process when CBP still has control over the products offered for importation. Along with CBP's data, CPSC would receive certificate data at a time when we can make admissibility decisions more quickly and can react to certificate data to prevent noncompliant goods from potentially being sold to consumers. The earlier that CPSC receives certificate data in the import process, the more quickly CPSC can review and clear products for importation.

Importantly, after the Commission issued the NPR on May 13, 2013, President Obama, on February 19, 2014, issued Executive Order 13659, *Streamlining the Export/Import Process for America's Businesses* (EO 13659), which requires certain federal agencies to significantly enhance their use of technology to modernize and simplify the trade processing infrastructure. Specifically, EO 13659 requires applicable government agencies to use CBP's International Trade Data System (ITDS), and its supporting systems, such as CBP's Automated Commercial Environment (ACE), to create a "single window" through which businesses will electronically submit import-related data for clearance. EO 13659 envisions and is working toward a simpler,

more efficient portal for trade use, to the benefit of both the trade and those government agencies with related authorities and responsibilities.

Participating agencies have until December 31, 2016, to use systems such as ACE as the primary means of receiving standardized import data. As an independent agency CPSC is not bound by EO 13659. However, importers and CPSC both have a strong interest in CPSC continuing to play a leadership role in this area. Electronic filing of certificate data will further important EO objectives, as well as aid CPSC in focusing the agency's resources to clear products more efficiently and improve enforcement of our safety regulations at the ports.

### **III. Additional Background on CBP's Automated Commercial Environment (ACE)**

Before the NPR was issued, CPSC staff discussed with CBP the capability of CPB's staff to accept certificate data into ACE and provide the information to CPSC's RAM for review. ACE functionality was being upgraded to accept PDF images (Document Imaging System, or DIS) and electronic data elements (PGA Message Set) for participating government agency (PGA) import-related forms or other data collection. Currently, CBP is conducting several test programs for PGAs, using DIS and PGA Message Set. *See, e.g.*, 77 FR 20835 (Apr. 6, 2012) (DIS test); 78 FR 75931 (Dec. 13, 2013) (PGA Message Set test). CPSC staff is discussing the possibility of participating in CBP's PGA Message Set test to pilot submission of electronic certificates of compliance. CPSC and CBP will provide additional notice, if such a pilot program involving CPSC is imminent.

### **IV. What Are we Trying to Accomplish with the Workshop?**

The goal of the workshop is for CPSC to receive practical and procedural information from stakeholders, about electronic filing of certificates at entry into CBP's ACE system. CPSC staff has been reviewing the comments received in response to the 1110 rule NPR. Some

comments reflect misunderstandings about CPSA certificate requirements, CPSC’s ability and intent to implement electronic filing of certificates, and the logistics involved in implementing electronic filing. Moreover, on March 17, 2014, Acting Chairman Adler received a letter from 32 trade associations urging a “stakeholder forum” to “engage with CBP, stakeholders and technical experts” on implementation of electronic filing. Accordingly, in response to stakeholder feedback and request, CPSC staff is conducting a workshop to:

- listen closely to stakeholders’ concerns related to the electronic filing of certificates, as well as to provide stakeholders the requested opportunity to give CPSC additional information on electronic filing of certificates that may assist the Commission with developing a final rule and with implementing electronic filing, if such a requirement is finalized;
- clarify for stakeholders certain issues related to the 1110 rulemaking;
- provide background on CPSC’s pilot-scale RAM system and its consistency with the “single window” approach for import data and risk management set forth in EO 13659; and
- provide CBP with an opportunity to discuss ACE and the DIS and PGA Message Set tests with stakeholders.

**V. What Topics Will the Workshop and the Related Comment Period Address?**

Stakeholder comments and presentations should address the topics below:

- A. Stakeholders’ current certificate and import procedures

- Current certificate and import procedures, including how manufacturers and importers are meeting the requirement that certificates “accompany” products or product shipments.
- Procedures and processes for creating and populating certificates that may influence implementation of an electronic certificate requirement, such as when and where certificates are created and maintained, matching certificates to those product units covered by the certificate, multiple entries for certain data components (*i.e.*, products covered by the certificate, applicable regulations, multiple testing sites for various tests), and complications or efficiencies achieved in certificate creation and maintenance by using component part testing.
- Challenges that certifiers encounter, in particular customs brokers who also serve as importers of record, in using the Component Part Rule, which allows certifiers to rely on the testing or certification of another party to issue a required certificate. This aspect of the Component Part Rule was specifically written to assist parties such as importers.
- Current challenges in meeting certificate requirements that may be resolved, minimized, or exacerbated if an electronic filing requirement for certificates were implemented.

#### B. Stakeholders’ Anticipated Challenges in Meeting an Electronic Filing Requirement

- The NPR proposed that certificates be filed as a document image, in PDF format, or as data elements. The NPR stated CPSC’s preference for data elements because they

are searchable. If CPSC participates in CBP's test programs, please address whether the agency or stakeholders would benefit from participating in CBP's DIS test and the PGA Message Set test. Document imaging does not provide the same efficiencies that data elements provide because the review of document images would be difficult to automate. Based on a review of the comments on the 1110 NPR, stakeholders appear to favor data elements as well. We welcome stakeholder input on how to focus resources if we participate in CBP test programs.

- If certificates were required to be filed as data elements, stakeholders would need to transmit certificate data to ACE via the Automated Broker Interface (ABI). Please discuss challenges your industry may face using ABI to transfer certificate data to CBP. Include a discussion of upgrading ABI, automation of certificate processes, costs, and timing for the relevant industry.
- Some stakeholders have noted that matching certificate information to particular products is complicated and challenging based on the number and variety of products offered. Please discuss whether stakeholders require more flexibility in organizing certificates to meet an electronic filing requirement, including whether and how certificate data can be streamlined to meet the needs of electronic filing on a per-line-item imported basis.
- Describe any practical and logistical problems, if any, your industry may face in implementing electronic filing of certificates. For each challenge described, please offer solutions or suggestions that would achieve the the goal of electronic certificates, consistent with EO 13659. Please comment on how the government-wide transition to electronic filing exclusively as contemplated by EO 13659 might

influence any concerns you might have with CPSC's proposed approach for filing certificates electronically.

- If the Commission finalizes a rule requiring electronic filing of certificates for imported products, the requirement would likely need to be phased in over time. For example, the requirement could be phased in based on the port of entry, by regulated product, by Harmonized Tariff Schedule for the U.S. codes, or by entry type. Please provide any comments or feedback on organized and logical approaches to phasing in an electronic filing requirement for certificate data.
- What, if any, exceptions should the Commission allow from any requirement to file an electronic certificate and why?

C. CBP's DIS and PGA Message Set Tests in ACE

- Provide questions and concerns for CBP pertaining to CPSC's certificate requirement.

D. CPSC's RAM Pilot

- Provide questions or concerns for CPSC regarding the RAM as the RAM Pilot relates to clearing products for importation and enforcement efforts. As part of any input on this topic, please consider the goals of EO 13659 as they relate to risk management, including seeking common risk management principles and methods.

## **VI. What Topics Will Not Be Discussed in the Workshop and the Related Comment Period?**

Although the NPR to amend 16 CFR part 1110 contained many proposals, the September 18, 2014 workshop is devoted to electronic filing of certificates at import. Therefore, the topics listed below are out of scope for the workshop:

- User fees (we plan to engage industry on this topic as part of our outreach, specifically through the Border Interagency Executive Council's External Engagement Committee, as well as through notice and comment rulemaking, should the Commission receive authority from Congress with respect to user fees);
- Category and scope of products required to be certified;
- Format for certificates other than at import;
- Certificate content requirements;
- Recordkeeping requirements;
- Requirements for component part certificates; and
- Ancillary issues, such as testing, labeling, and laboratory accreditation.

## **VII. Details Regarding the Workshop**

### **A. When and Where Will the Workshop Be Held?**

CPSC staff will hold the workshop from 9 a.m. to 4 p.m. on September 18, 2014, in the Hearing Room at CPSC's headquarters: 4330 East West Highway, Fourth Floor, Bethesda, MD 20814. The workshop will also be available through a webcast, but viewers will not be able to interact with the panelists and presenters.



## **B. How Do You Register for the Workshop?**

If you would like to attend the workshop, but you do not wish to make a presentation or participate on a panel, we ask that you register by September 5, 2014. (*See the **ADDRESSES** section of this document for the website link and instructions on where to register.*) Please be aware that seating will be on a first-come, first-served basis. The workshop will also be available through a webcast, but viewers will not be able to interact with the panelists and presenters.

If you would like to make a presentation at the workshop, you should register by August 8, 2014. (*See the **ADDRESSES** section of this document for the website link and instructions on where to register.*) When you register, please indicate that you would like to make a presentation. CPSC staff will contact you regarding the proposed content of your presentation and presentation guidelines. We will select individuals to make presentations based on considerations such as:

- the regulatory scope of the industry involved;
- the individual's demonstrated familiarity or expertise with the topic;
- the practical utility of the information to be presented; and
- the individual's viewpoint or ability to represent certain interests (such as large manufacturers, small manufacturers, consumer organizations, and the scope of the regulated industry).

We would like the presentations to represent and address a wide variety of interests.

Although we will make an effort to accommodate all persons who wish to make a presentation, the time allotted for presentations will depend upon the number of persons who

wish to speak on a given topic and the agenda. We recommend that individuals and organizations with common interests consolidate or coordinate their presentations, and request time for a joint presentation. If you wish to make a presentation and want to make copies of your presentation or other handouts available, you should bring copies to the workshop. We expect to notify those who are selected to make a presentation or participate in a panel at least two weeks before the workshop. Please inform Ms. Celestine Kish, [ckish@cpsc.gov](mailto:ckish@cpsc.gov), 301-987-2547, if you need any special equipment to make a presentation.

If you need special accommodations because of disability, please contact Ms. Celestine Kish, [ckish@cpsc.gov](mailto:ckish@cpsc.gov), 301-987-2547, at least 10 days before the workshop.

In addition, we encourage written or electronic comments. Written or electronic comments will be accepted until October 31, 2014. Please note that all comments should be restricted to the topics covered by the workshop, as described in this Announcement.

Dated: June 25, 2014

Todd A. Stevenson,  
Secretary, U.S. Consumer Product Safety Commission

[FR Doc. 2014-15241 Filed 07/02/2014 at 8:45 am; Publication Date: 07/03/2014]